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A & S ELECTRONICS, INC., d/b/a  
11 TRUSTPRICE.COM, and ALAN Z. LIN

12  
13 UNITED STATES DISTRICT COURT  
14 NORTHERN DISTRICT OF CALIFORNIA

15 MICROSOFT CORPORATION, a  
Washington corporation;

16 Plaintiff,

17 v.

18  
19 A&S ELECTRONICS, INC., a  
California corporation, d/b/a  
20 TRUSTPRICE.COM; ALAN Z. LIN,  
an individual; and JOHN DOES  
21 1-5;

22 Defendants.

Case No. C08 02321 BZ

ANSWER

DEMAND FOR JURY TRIAL

23  
24 Defendants A & S Electronics, Inc., dba TrustPrice.com ("A&S  
25 Electronics"), and Alan Z. Lin hereby answer the complaint of  
26 Microsoft Corporation ("Microsoft") as follows:

27 INTRODUCTION

28 1. The allegations of this paragraph state legal conclusions

1 as to which no answer is required.

2 2. Defendants admit that Microsoft is a corporation and that  
3 it is engaged in the software business. Defendants lack  
4 information or belief sufficient to respond to the allegations of  
5 this paragraph.

6 3. Admit that A&S Electronics, Inc., dba TrustPrice.com, is  
7 a California corporation with its principal place of business in  
8 Milpitas, California. Admit that A&S Electronics distributes  
9 computer software and components through the web site  
10 www.trustprice.com. Deny that Microsoft has suffered damages or  
11 other harm as a direct and proximate result of any alleged wrongful  
12 conduct by A&S Electronics.

13 4. Admit that Alan Z. Lin resides in Fremont, California,  
14 and that he is the registered agent for A & S Electronics. Deny  
15 that Lin personally participated in or supervised, directed, or  
16 controlled any wrongful conduct. Deny that Lin derived direct  
17 financial benefit from or that he may be held personally liable for  
18 any alleged wrongful conduct by A&S Electronic. Deny that  
19 Microsoft has suffered damages or other harm as a result of any  
20 alleged wrongful conduct by Lin.

21 5. Defendants lack information or belief sufficient to admit  
22 or deny the allegations of the first sentence of this paragraph.  
23 Defendants deny the allegations of the second and third sentences  
24 of this paragraph.

25 6. The allegations of this paragraph state legal conclusions  
26 as to which no answer is required.

27 7. The allegations of this paragraph state legal conclusions  
28 as to which no answer is required.

1           8.     The allegations of this paragraph state legal conclusions  
2 as to which no answer is required.

3                           INTRADISTRICT ASSIGNMENT

4           9.     The allegations of this paragraph state a legal  
5 conclusion to which no response is required.

6                           FACTS COMMON TO ALL CLAIMS

7           10.    Admit that Microsoft develops computer software programs.  
8 Defendants lack information or belief sufficient to admit or deny  
9 the remaining allegations of this paragraph and puts Microsoft to  
10 strict proof thereof.

11           11.    Defendants lack information or belief sufficient to admit  
12 or deny the allegations of this paragraph and put Microsoft to  
13 strict proof thereof

14           12.    The reference to Microsoft's "partners" is so vague and  
15 ambiguous as to preclude a response. In addition, defendants lack  
16 information or belief sufficient to admit or deny the allegations  
17 of this paragraph and put Microsoft to strict proof thereof.

18           13.    Defendants lack information or belief sufficient to admit  
19 or deny the allegations of this paragraph and put Microsoft to  
20 strict proof thereof.

21           14.    Defendants lack information or belief sufficient to admit  
22 or deny the allegations of this paragraph and put Microsoft to  
23 strict proof thereof. Defendants nevertheless contend and admit  
24 that Microsoft attempts to suppress geographic competition beyond  
25 the scope of its copyrights and to impose extra-copyright  
26 restrictions on the non-infringing use and enjoyment of its works.

27           15.    Defendants lack information or belief sufficient to admit  
28 or deny the allegations of this paragraph and put Microsoft to

1 strict proof thereof.

2 16. Admit that Microsoft has developed a software program  
3 known as "Microsoft Windows 98." Defendants lack information or  
4 belief sufficient to admit or deny the remaining allegations of  
5 this paragraph and put Microsoft to strict proof thereof.

6 17. Admit that Microsoft has developed an operating system  
7 software known as "Microsoft Windows XP Professional." Defendants  
8 lack information or belief sufficient to admit or deny the  
9 remaining allegations of this paragraph and put Microsoft to strict  
10 proof thereof.

11 18. Admit that Microsoft has developed software known as  
12 "Microsoft Office Ultimate 2007." Defendants lack information or  
13 belief sufficient to admit or deny the remaining allegations of  
14 this paragraph and put Microsoft to strict proof thereof.

15 DEFENDANTS' UNLAWFUL CONDUCT

16 19. Deny.

17 20. Admit that A&S Electronics advertises and sells software,  
18 including Microsoft software, in interstate commerce through the  
19 website [www.trustprice.com](http://www.trustprice.com). Deny that this software is  
20 "infringing." The remaining allegations of this paragraph are  
21 denied.

22 21. Defendants lack information or belief sufficient to admit  
23 or deny the allegations of this paragraph and put Microsoft to  
24 strict proof thereof.

25 22. Admit.

26 23. Defendants lack information or belief sufficient to admit  
27 or deny the allegations of the first and second sentences of this  
28 paragraph and put Microsoft to strict proof thereof. Defendants

1 deny the allegations of the third sentence of this paragraph.

2       24. Admit that Microsoft sent a letter to A & S. The letter  
3 in question, if provided and authenticated, speaks for itself and  
4 defendants deny all characterizations of the contents of the letter  
5 by Microsoft inconsistent therewith.

6       25. Defendants lack information or belief sufficient to admit  
7 or deny the allegations of this paragraph and put Microsoft to  
8 strict proof thereof. Defendants deny that they sold infringing  
9 software.

10       26. Defendants lack information or belief sufficient to admit  
11 or deny the allegations of this paragraph and put Microsoft to  
12 strict proof thereof.

13       27. Defendants lack information or belief sufficient to admit  
14 or deny the allegations of this paragraph and put Microsoft to  
15 strict proof thereof. Defendants deny that they sold infringing  
16 software.

17       28. Defendants lack information or belief sufficient to admit  
18 or deny the allegations of this paragraph and put Microsoft to  
19 strict proof thereof. Defendants deny that they sold infringing  
20 software.

21       29. Defendants lack information or belief sufficient to admit  
22 or deny the allegations of this paragraph and put Microsoft to  
23 strict proof thereof. Defendants deny that they sold infringing  
24 software.

25       30. Defendants lack information or belief sufficient to admit  
26 or deny the allegations of this paragraph and put Microsoft to  
27 strict proof thereof. Defendants deny that they sold infringing  
28 software.

1 31. Defendants deny the allegations of this paragraph,  
2 including any allegation that Microsoft is entitled to the  
3 requested relief. Defendants further state that the third sentence  
4 of this paragraph states legal conclusions as to which no response  
5 is required.

6 CLAIM I

7 (Copyright Infringement, 17 U.S.C. § 501, et seq.)

8 32. Defendants repeat and reallege their responses to  
9 paragraphs 1 through 31.

10 33. Defendants lack information or belief sufficient to admit  
11 or deny the allegations of this paragraph and put Microsoft to  
12 strict proof thereof.

13 34. Deny.

14 35. Deny.

15 36. Deny.

16 37. Deny.

17 38. Deny.

18 39. Deny.

19 CLAIM II

20 (Infringing Importation of Copyrighted Works,

21 17 U.S.C. § 602)

22 40. Defendants repeat and reallege their responses to  
23 paragraphs 1 through 39.

24 41. Defendants lack information or belief sufficient to admit  
25 or deny the allegations of this paragraph and put Microsoft to  
26 strict proof thereof.

27 42. Deny.

28 43. Deny.

44. Deny.

45. Deny.

46. Deny.

47. Deny.

CLAIM III

(Digital Millennium Copyright Act, 17 U.S.C. § 1201(a)(2))

48. Defendants repeat and reallege their responses to paragraphs 1 through 47.

49. Deny.

50. Deny.

51. Deny.

52. Deny.

53. Deny.

AFFIRMATIVE DEFENSES

First Affirmative Defense

The complaint fails to state a claim for which relief may be granted.

Second Affirmative Defense

On information and belief, Microsoft is estopped from asserting any claim that the software is counterfeit or otherwise infringing.

Third Affirmative Defense

Plaintiff's claims are barred by the first sale doctrine.

Fourth Affirmative Defense

Plaintiff's claims are barred by the defendants' statutory entitlement, under Section 109 of the Copyright Act, to redistribute non-infringing copies of Microsoft's works without the consent of Microsoft.

Fifth Affirmative Defense

Some or all of Microsoft's claims are barred by the doctrine of fair use.

Sixth Affirmative Defense

On information and belief, the defendants' conduct is legally privileged.

Seventh Affirmative Defense

Defendants deny that they have sold infringing copies of software.

Eighth Affirmative Defense

On information and belief, some or all of Microsoft's claims are barred by the doctrine of unclean hands, including Microsoft's effort to bootstrap its limited copyrights into a tool for enforcing price discrimination and the elimination of the very price competition that the first sale doctrine and Section 109 of the Copyright Act encourage.

Ninth Affirmative Defense

On information and belief, some or all of plaintiff's claims are barred by the applicable statute of limitations.

Tenth Affirmative Defense

On information and belief, some or all of plaintiff's claims are barred by the doctrine of laches.

Eleventh Affirmative Defense

Microsoft has failed to take reasonable steps to mitigate its alleged damages.

Twelfth Affirmative Defense

On information and belief, Microsoft has failed to join necessary or indispensable parties.



Thirteenth Affirmative Defense

No privity of contract exists between plaintiff Microsoft and these defendants.

Fourteenth Affirmative Defense

Microsoft's claims are contrary to public policy.

Fifteenth Affirmative Defense

Microsoft's claims, in furtherance of its methods of controlling uses of its work beyond the scope of its copyrights, seek to suppress speech that is un-restricted by copyright and is, therefore, fully protected by the First Amendment, thereby placing beyond the aid of a United States court of law Microsoft's efforts to suppress it.

Sixteenth Affirmative Defense

Microsoft's method of controlling distribution, as outlined in its claims, reaches beyond the scope of its authority under the Copyright Act, attempts to deny owners of lawfully made copies the rights Congress vested in them and denied to the copyright holder, and attempts to nullify the limitations on copyrights set forth in the Copyright Act, thereby constituting copyright misuse and rendering Microsoft's copyrights unenforceable so long as such misuse continues.

The defendants reserve the right to amend and supplement these affirmative defenses as further proceedings may warrant.

PRAYER FOR RELIEF

WHEREFORE, defendants A & S Electronics, Inc., dba TrustPrice.com, and Alan Z. Lin, pray that plaintiff Microsoft

1 Corporation take nothing on its complaint, for an award of costs  
2 and attorneys' fees as permitted by law (including under § 505 of  
3 the Copyright Act), and for such other relief as may be  
4 appropriate.

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6  
7 GORMAN & MILLER, P.C.

8  
9 By: \_\_\_\_\_/s/\_\_\_\_\_  
10 JOHN C. GORMAN  
11 Attorneys for Defendants  
12 A&S Electronics, Inc., dba  
13 Trustprice.com, and Alan Z. Lin  
14

15 DEMAND FOR JURY TRIAL

16 Pursuant to Fed. R. Civ. P. 38(b), defendants hereby demand  
17 trial by jury.  
18

19  
20 GORMAN & MILLER, P.C.

21 By: \_\_\_\_\_/s/\_\_\_\_\_  
22 JOHN C. GORMAN  
23 Attorneys for Defendants  
24 A&S Electronics, Inc., dba  
25 Trustprice.com, and Alan Z. Lin  
26  
27  
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